



STATE OF DELAWARE


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MEMORANDUM

TO: The Chairman and Members of the Commission

FROM: Lisa B. Driggins, Public Utilities Analyst 

DATE: May 28, 2015

SUBJECT: IN THE MATTER OF APPLICATION OF W.L. GORE & ASSOCIATES, INC. TO SELL THEIR FIBER OPTIC NETWORK IN DELAWARE TO PEG BANDWIDTH DE, LLC.
(FILED MAY 5, 2015) - DOCKET- NO. 15-0973

Application:

On May 5, 2015, W.L. Gore & Associates, Inc. ("Gore") filed an application (the "Application") seeking approval by the Delaware Public Service Commission ("Commission") to sell the fiber optic network in Delaware to PEG Bandwidth DE, LLC ("PEG Bandwidth").

Applicants:

W.L. Gore & Associates, Inc.

Gore is a Delaware Corporation with headquarters and facilities in Delaware. Gore has entered into unsolicited, long term contracts with four dark fiber licensees. Three of the dark fiber licenses are for segments of a few strands of "unlit" fiber that run from points in Maryland to points in Delaware with no fiber segments that are located wholly in Delaware and thus are interstate. The segments licensed to a fourth dark fiber licensee is located fully in Maryland. Gore has also donated strands of dark fiber to the City of Newark to assist the city with certain operational network connections for the municipal Water and Police Departments. The donation of dark fiber will be sustained by PEG Bandwidth DE, LLC ("PEG Bandwidth"). Gore was

granted a Certificate of Public Convenience and Necessity (“CPCN”) to provide intrastate telecommunications services for dedicated use to itself on June 3, 2003 in PSC Docket No. 03-169/Commission Order No. 6177.

PEG Bandwidth DE, LLC

PEG Bandwidth, was granted a Certificate of Public Convenience and Necessity (“CPCN”) to provide competitive local services within the State of Delaware on April 9, 2013 in PSC Docket No. 12-531/Commission Order No. 8322.

Transaction:

The objective or purpose of the transaction is to transfer Gore’s fiber assets to a certificated common carrier which can efficiently and effectively maintain, operate, market and manage a broadband fiber network in the State of Delaware. Gore is planning to sell the fiber optic network in Delaware to PEG Bandwidth.

Once the proposed transaction is completed, Gore has made the business decision to surrender its CPCN pursuant to 26 Del. C. 203A.

Public Interest:

The Applicant asserts that the public interest will be served. According to the Applicant, the proposed transaction will serve the public interest by allowing more efficient use of the network, including the provision of more service that may be currently provided by Gore under applicable law. Furthermore, the transaction is not expected to result in the discontinuance, reduction, loss or impairment of service. All licenses will be assumed by PEG Bandwidth and the transfer will be seamless and transparent as to the network operation.

Staff’s Recommendation:

Applications seeking transfer of asset approval by large multi-state resellers of competitive intrastate telecommunications services technically come under the provisions of 26 Del. C. §215 because the companies are deemed to be public utilities. In addition, the Applicants have represented that the proposed transaction is in accordance with law, for a proper purpose, and consistent with the public interest. The Commission has previously allowed such applications to become effective by statutory approval without Commission action. The result seems appropriate under the circumstances. Staff, therefore, recommends that the Commission not act on this application. Under 26 Del. C. §215, the effect will be that the application is deemed to be approved by the Commission. Staff will also acquire verification from the Applicants that the proposed transfer of assets has been completed.